

Misconduct restraining orders – information

If a person behaves badly towards you or damages your property, it may be possible to get a court order to stop their behaviour.

One type of court order is a misconduct restraining order (MRO). This type of order can be requested when, for example, you feel intimidated by a person's behaviour or they damage your property. However, if there is personal violence or you are in a family relationship with the person, there are other types of order that may be more appropriate for you than an MRO. If:

- the behaviour you want to stop involves violence or a threat of violence (for example, assault or stalking) and you are in a family relationship with the person you may need to apply for a family violence restraining order (FVRO). See the Legal Aid WA infosheet: *Family violence restraining orders – information*.
- the behaviour you want to stop involves personal violence but you are not in a family relationship with the person, you may need to apply for a violence restraining order (VRO). See the Legal Aid WA infosheet: *Violence restraining orders – information*.

This sheet is about making an application for an MRO. It tells you what sort of behaviour by the other person the court will look at when it considers your application.

It is important to get legal advice when making an application for an MRO. You should use this sheet together with legal advice.

If you have received a summons to go to court for an MRO then see the Legal Aid WA infosheet: *Responding to a restraining order application*.

Terms used

If you are applying for the order you are called the “applicant” or the “protected person” if an order is made.

The person who you want the order against is called the “respondent” or, if the order is made, the “person who is bound”.

What can an MRO do?

An MRO may include conditions to stop the respondent doing whatever the court thinks is necessary. This will often depend on the circumstances of each case.

Note: The court cannot make a restraining order against a child under the age of 10 years.

The MRO can include stopping the respondent from doing things they would normally be allowed to do such as:

- be on or near premises where you live or work
- be on or near a named building, locality or place
- come within a certain distance of you
- behave in an intimidatory or offensive manner towards you
- contact or attempt to contact you in any way, including to ring, write to, SMS or text message you or communicate with you by any other electronic means including Facebook

- be at a place even if they have a right to be there, or
- have a gun or explosives, or a gun or explosives licence, or apply for a gun or explosives licence (note: such a condition is not automatic, it must be asked for and the court does not have to include any such condition in the order).

An MRO can also make anyone else do any of the things listed above.

Who can apply for a misconduct restraining order?

An application for an MRO can be made by:

- any person seeking to be protected (or their guardian)
- the parent/guardian of a child or child welfare officer (for example, a Department of Communities, Child Protection case manager) for a child, or
- a police officer, either for a person to be protected or the public generally.

How do I apply for an MRO?

If the respondent is an adult, you can apply for an MRO in the Magistrates Court of WA. If the respondent is under 18 years of age, you can apply for an MRO in the Children’s Court of WA.

A fee is payable. In some cases you may be eligible to pay a reduced fee.

The application form can be obtained from the Magistrates Court of WA website or any registry. You can also apply online on the eCourts Portal.

Unlike in some FVRO or VRO applications, you cannot get an MRO straight away.

When you make your application the court will set a court date that allows time for the police to give the application to the respondent.

The first court date is usually a “mention” date (sometimes called a “callover” date). You do not need to bring witnesses on the “mention” date. On that day the magistrate will want to:

- check if you still wish to go ahead with your application for an MRO

- see how many witnesses you have, and
- decide how long the final order hearing will take.

The second court date is normally the final order hearing. On this date you bring any witnesses and come prepared to tell the court why you need an MRO.

Different courts may have different systems. Always ring the court before a court date to check if the first date is a “mention” date or the final order hearing. See the flowchart below.

What do I have to prove to get an MRO?

The court may make an MRO if it thinks that without the MRO the respondent is likely to:

- act in a way that could reasonably make you feel intimidated or offended and would in fact actually intimidate or offend you, or
- cause damage to your property or property you have with you, or
- act in a way that is, or may lead to, a breach of the peace, or
- commit an offence under *The Criminal Code* section 70A(2A) (this means commit an aggravated trespass on an animal source food production place)

and it thinks an MRO is appropriate in the circumstances.

However, a court cannot make an MRO if the respondent is, or has been, in a family relationship with you.

The definition of family relationship is broad and covers current and former spouses, partners, siblings, children, parents, grandparents and step-family relationships, as well as other relatives and members of intimate or family-type relationships. It also covers the former spouse or de facto partner (or someone related to them) of the person to be protected’s current spouse or de facto partner.

If the respondent is in a family relationship with you, you may need to apply for an FVRO instead of an MRO.

What is a breach of the peace?

A breach of the peace is a legal term meaning something that disturbs the public peace.

Examples are:

- regularly screaming and shouting in a public place
- protesting in a way that prevents people from carrying out their work, or
- intimidating people who are trying to use a public open space.

What is an aggravated trespass under s70A(2A) Criminal Code?

Trespass is when a person goes on to private property without a lawful reason and without permission from the owner.

The offence under s70A(2A) *Criminal Code* of aggravated trespass only applies if a person trespasses on a place used for animal source food production. Such places include abattoirs, knackeries, commercial dairy and egg farms and other places where animals are reared or fattened for commercial food production.

Also, this offence only applies if the person who is trespassing on such a place, either during or as a consequence of the trespass:

- interferes with, or intends to interfere with, animal source food production, or
- assaults, intimidates or harrasses, or intends to assault, intimidate or harrass, a person who works in animal source food production, or a family member of that worker.

Family member is broadly defined and includes any person regarded under the customary law or tradition of an Aboriginal or Torres Strait Islander person's community, to be part of that person's extended family or kinship group.

There are different ways a person could interfere with food production when trespassing on an animal source food production place. For example, a person could:

- have a negative effect on the biosecurity of a farm by having contaminated soil on their shoes
- release an animal or let an animal escape

- destroy, damage or steal property used in food production
- contaminate meat, eggs or dairy products
- cause a person to reasonably believe that these things have occurred, or might occur.

If a court is satisfied a person is likely to commit a trespass on an animal source production place and interfere with animal food source production in ways like this, or harass workers or their family, this means it is satisfied the person is likely to commit an offence under s70A(2A) *Criminal Code*.

Once the court is satisfied of this, it can make an MRO to stop the person from trespassing and doing these things.

What will the court take into account in deciding whether to make an MRO?

See the Legal Aid WA Infosheet *Restraining orders – court process*.

Will I have to pay any costs at court?

Sometimes the respondent may have a lawyer.

At the final order hearing, if the court does not agree to give you a final MRO the respondent's lawyer may ask the court to order that you pay legal costs.

The court would usually only do this if it thought you did not really believe you needed a restraining order, or if your case was so weak it was never likely to succeed.

Do I need to see a lawyer?

You should get legal advice so that you understand:

- the legal process and what it means to you
- the legal costs you may have to pay, and
- how to represent yourself if you don't have a lawyer

Your local community legal centre may be able to assist you with legal advice.

What do I need to do if I am representing myself?

- Gather all the information you can.
- Keep all your paperwork together in a safe place.
- Think carefully about your reasons for wanting the MRO and why the respondent might object to the MRO being made final.
- Arrange for your witnesses to come to court for the hearing.
- Get legal advice about how to summons witnesses to court so that you make sure that they come.
- If you want to summons a child to give oral evidence, unless your case is in the Children's Court, you must ask the permission of the court.
- Get information from Legal Aid WA as set out below about the court procedure at the final order hearing and infosheets that might help you to represent yourself.

When does the MRO come into force?

The MRO comes into force at the time it is served on the respondent by the police. If it has not been served, the order is not in force and has no effect.

If the respondent is in court at the time the order is made, the order comes into effect immediately.

How long will the MRO last?

An MRO stays in force against:

- an adult, for whatever time is specified in the order or one year if no time is specified, or
- a child or young person under 18 years of age, for whatever time is specified in the order. It can be no longer than six months.

What is a breach of an MRO?

If the respondent does something that is against a condition of the MRO they are "breaching" the order.

You should report any breaches of the MRO to the police. If you are unsure if the respondent has

breached the MRO seek legal advice as soon as possible.

If a protected person aids a breach of a restraining order, the criminal court dealing with the breach has the power to cancel or vary a restraining order. However, the court may only do this if the protected person has had an opportunity to make submissions.

What are the penalties for breaching an MRO?

It is a criminal offence if a court finds a respondent has breached an MRO.

The penalty is a fine of up to \$1,000.

What if I want to change or cancel an MRO?

Get legal advice as soon as possible. See the Legal Aid WA infosheet: *After a restraining order is made*.

What if I want to appeal a decision of the court not to make an MRO?

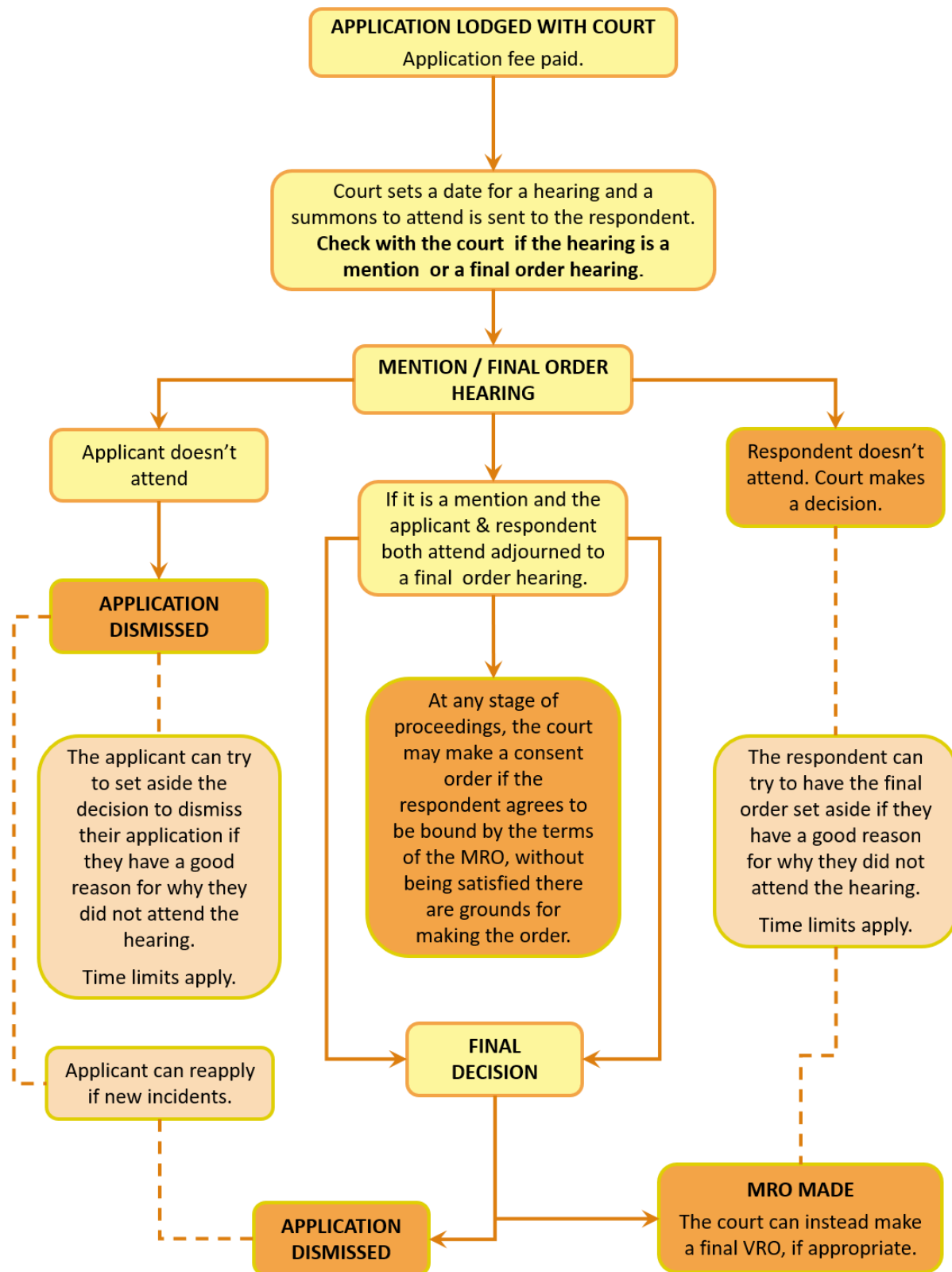
Get legal advice as soon as possible. Time limits apply. See the Legal Aid WA infosheet: *After a restraining order is made*.

Where can I get more information?

- Legal Aid WA's Infoline on 1300 650 579 for information or referral or go to its website to obtain copies of other infosheets that may help you prepare for and represent yourself in a restraining order final hearing.
- The [Magistrates Court of WA](#) website or a registry for fact sheets and the forms needed for court.
- You may be able to get assistance from a [community legal centre](#). Call (08) 9221 9322 to find the one nearest to you.
- The [Law Society of WA](#) on (08) 9324 8600 for the names of lawyers who specialise in this area if you need to pay for a private lawyer.

Flowchart – Misconduct restraining order – court process

Procedure for a misconduct restraining order



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